

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SCOTT FAPPIANO,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

DECLARATION

07-CV-2476 (SLT) (SMG)

SUZANNE MELENDEZ, for her declaration pursuant to 28 U.S.C. §1746, states:

1. I am currently a judge in the Queens County Criminal Court, and I was formerly an Assistant District Attorney at the Kings County DA's Office. I make this declaration in support of defendants' motion for summary judgment. I have personal knowledge of the facts set forth below.

2. In or about December, 1983, I was employed as a supervising ADA in the Kings County DA's Office Sex Crimes Unit. I supervised two lineups which occurred on December 6, 1983, involving the plaintiff in this action, Scott Fappiano. I also presented the case *People v. Fappiano*, Indictment # 6923/83, to the grand jury in or about December, 1983.

3. During the second lineup, the victim's husband (whose initials are "F.S.") did not identify Mr. Fappiano. Instead, F.S. selected filler number five when he viewed the lineup. Mr. Fappiano was in seat number six for that lineup.

4. Both F.S. and the detective who was present at the lineup, Helene Gottlieb, testified in the grand jury that F.S. selected filler number five. This testimony was consistent with what I observed during the lineup, and therefore accurate. If F.S. had selected any other person in the lineup, I would have corrected the record immediately. My practice, and

that of our office, was to ensure that the grand jury was presented with fully accurate testimony on all matters, including especially any facts tending to negate the guilt of the accused. I adhered to that practice at all times, including in this case.

5. I do not independently recall which number F.S. selected (although I recall that he did not identify the suspect). However, my review of the grand jury minutes, and my clear recollection of my practice and that of my office at the time, leads me to conclude unequivocally that F.S. did not select number four at the lineup, but rather, he selected number five.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Queens County, New York, on July 6, 2010.


HON. SUZANNE MELENDEZ